HIGH COURT OF UTTARANCHAL AT NAINITAL

C-482 NO. 1021 OF 2006

1. Raghubir Singh, S/o Bachan Singh,
2. Bachan Singh, S/o Gopal Singh,

Both residence of Village-Pana, Patwari Circle, Gauna, Tehsil and District-Chamoli.

.....Applicants.

Versus

1. State of Uttaranchal.
2. Dulapi Lal, S/o Sauniya Lal,

R/o Village-Pana,

Tatwari Circle-Gauna,

Tehsil & District - Chamoli. .....Opposite Parties.

Hon'ble Rajesh Tandon, J.

Heard Sri Pankaj Purohit, counsel for the applicants and A.G.A. for the State.

2. By the present application filed under Section 482 of the Code of Criminal Procedure, the applicants have prayed for quashing the proceedings in Criminal Complaint Case No. 373/2004 Dulapi Lal Vs. Raghubir Singh under Section 392/452/504/506 I.P.C and 3/10 Scheduled Castes and Scheduled Tribes (Prevention and Atrocities) Act, 1989 as well as summoning order dated 15.09.2004.

3. Briefly stated, according to the applicants, the applicant no. 1 is presently an elected Pradhan of the Gram Panchayat-Pana, District-Chamoli and the applicant no. 2 is the Ex-Pradhan of the Village who is at present nearly 60 year old.

4. On 28.04.2004, opposite party no. 2 filed a criminal complaint in the Court of Chief Magistrate Chamoli against the applicants, which was registered as a Criminal Case No. 373/2004 Dulapi Lal Vs. Raghubir Singh and another stating therein that on 26.04.2004, when both the applicants were sitting in the house of Gunari lal at about 1:00 p.m., the opposite party no. 2 indulged into a alteration with the applicants saying that the applicants made payment for construction of the house under the Nirbal Awas Yojna and gave sanction of three houses to one person but the applicants had not made any payment to the opposite party no. 2 for his house under the aforesaid scheme. Thereafter, the applicants got excited and tried to assault the opposite party no. 2 and due to this fear, the opposite party ran away and entered into his residence and behind them, the applicants also entered into his residence and abused him related to his caste. In this quarrel, Makakhan Lal, Narnedra Lal, Kundani Lal and Gunari Lal intervened.

5. Statement of opposite party no. 2 Shri Dulapi Lal was recorded under Section 200 of the Code of Criminal Procedure and the Statements of P.W.1 Katigu Lal, P.W.-2 Madani Lal, P.W.-3 Sundari Lal, P.W.-4 Narendra Lal wre recorded under Section 202 of the Code of Criminal Procedure.

6. After examining the material on record i.e. the statements of the aforesaid persons, Chief Magistrate Chamoli took the cognizance of the matter and summoned the applicants to face the trial of the case

under Sections 392/452/504/506 I.P.C. and 3/10 Scheduled Castes and Scheduled Tribes (Prevention and Atrocities) Act, 19189 vide order dated 15.09.2004.

7. Being aggrieved by the aforesaid summoning order, the applicant no. 1 Reghubir Singh moved a criminal Revision n. 45 of 2004 before the Sessions Judge Chamoli Raghubir Singh Vs. State of Uttaranchal and another, but the same was rejected vide order dated 22.06.2005.

8. In the meantime, the summoning order dated 15.09.2004 has been challenged by the applicant no. 2 by filing a criminal Revision No. 41/2005 Bachan Singh Vs. State of Uttaranchal and another on the similar grounds as raised by the applicant no.1. The same was also rejected on 08.11.2006.

9. In ***Medchal Chemicals and Pharma (P) Ltd. v. Biological E. Ltd. and others (2003) 3 SCC 269,*** the Apex Court has been observed as under:

> "19. *Considering the factual aspect of the matter, we unhesitatingly state, however, that the issue involved in the matter under consideration is not a case in which the criminal trial should have been short-circuited. We, thus, without expressing any opinion on the merits of the case allow the appeal and set aside the impugned order of the high Court and restore the complaint. The learned trial Magistrate shall proceed with*

The complaint and dispose of the same in accordance with the law with utmost expedition. Be it clarified however that observations as above in this judgment be not taken as an expression of any opinion of ours."

10. Since it is complaint case, therefore, it is relevant to quote following portion of ***Smt. Husna and others v. state of U.P. and others [2006 (56) ACC 659]:***

"7. *The petition is finally disposed of witht eh direction to the petitioners to appear before the Court concerned within 15 days of passing of this order and if they do so, the Court will permit them to file appearance bonds to his satisfaction for their regular appearance in the case."*

11. In view of the aforesaid the applicants are directed to present themselves before the Chief Judicial Magistrate and ensure their presence by furnishing personal bonds to the satisfaction of the Magistrate concerned for their regular appearance in the case.

12. Subject to the observations made above, application under Section 482 Cr.P.C. is dismissed.

(Rajesh Tandon, J.)

13th December, 2006

Rathour